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In the Supreme Court of the United States

OCTOBER TERM, 1978

UNITED STATES OF AMERICA, PETITIONER

v.

ROBERT CHARLES STEVIE

UNITED STATES OF AMERICA, PETITIONER

v.

RAYMOND LEE REYNOLDS

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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The Solicitor General, on behalf of the United States, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the en banc court of appeals (App. A, *infra*, 1a-15a) is reported at 582 F.2d 1175. The

opinion of the panel (App. B, *infra*, 16a-31a) is reported at 578 F.2d 204.

JURISDICTION

The judgments of the court of appeals (Apps. D and E, *infra*, 33a-34a) were entered on August 15, 1978, and a petition for rehearing was denied on October 18, 1978 (App. C, *infra*, 32a). On November 9, 1978, Mr. Justice Blackmun extended the time within which to file a petition for a writ of certiorari to and including December 17, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether contraband seized by law enforcement officers as a result of an immediate, probable cause search without a warrant of a suitcase found inside an automobile stopped on the highway should have been suppressed.

STATEMENT

After separate trials on stipulated facts[1] in the United States District Court for the District of Minnesota, respondents were convicted of possession with intent to distribute of approximately 250 pounds of marijuana in violation of 21 U.S.C. 841(a)(1). They were sentenced to 30 months' imprisonment, to be followed by two years' special parole. After a divided

[1] Respondents stipulated that the evidence adduced at the joint suppression hearing would constitute the record for purposes of their trials.

panel of the court of appeals affirmed (App. B, *infra*, 16a-31a), the court reconsidered the case en banc and reversed, one judge dissenting (App. A, *infra*, 1a-15a).

The evidence at the hearing on respondents' motion to suppress showed that on February 9, 1976, Officer John Boulger and Agent Markus Kryger of the Drug Enforcement Administration Task Force, acting on a tip from a previously reliable informant, went to the Minneapolis-St. Paul International Airport to observe James Erickson, who was allegedly returning from Phoenix, Arizona, or Las Vegas, Nevada, with a large quantity of marijuana (1 Tr. 6). The agents knew that Erickson was associated with Theodore Luciow, whose twin brother Anthony had been arrested in possession of a substantial quantity of marijuana found in a car rented from Avis in Arizona in the name of "Raymond Reynolds" (1 Tr. 9-11). They also had reliable information that Anthony Luciow had gone to Arizona to purchase this marijuana from Reynolds (*ibid.*).

Among the passengers disembarking from a Las Vegas flight shortly after midnight were respondents, who attracted the agents' attention because they were acting "in a suspicious manner" and were "apprehensive of things around them" (1 Tr. 16-17). As the agents watched, respondent Stevie removed two large and heavy suitcases from the baggage carousel (1 Tr. 20). Agent Kryger then walked up next to respondent Stevie and observed the name "M. Roberts" and a Phoenix address on the suitcases. After looking

warily at Agent Kryger, respondent Stevie engaged a skycap to handle the luggage and returned for three more large suitcases. Respondent Stevie gave directions to the skycap and then joined respondent Reynolds at the Avis automobile rental counter (*ibid.*). Respondents' gestures indicated that their conversation pertained to the agents (1 Tr. 26). After respondents had departed, Agent Kryger learned from the salesperson at the counter that they had rented a station wagon in the name "R. Reynolds" of Phoenix, Arizona, and that the rental forms were signed "Raymond L. Reynolds" (1 Tr. 28).

Agent Kryger and Officer Boulger, driving separate vehicles, followed respondents' station wagon out of the airport parking lot (1 Tr. 30-31). The agents, who were in radio contact with each other and with the DEA office, observed the passenger in the station wagon continually face the rear and the driver frequently look into his rear-view mirror (1 Tr. 32). Although the agents had originally planned to follow respondents to their destination, they soon decided that that was impractical because it appeared that the suspects were becoming increasingly aware of the surveillance (1 Tr. 33). They therefore stopped respondents' station wagon on the highway.

Agent Kryger approached the vehicle and asked the driver for his license, which revealed that he was Raymond L. Reynolds of Phoenix, Arizona. At the same time, Officer Boulger established the passenger's identity as Robert Stevie. Hence, neither of the names of the two men matched the name Agent Kryger had

observed on their luggage at the airport (1 Tr. 33-34). As Agent Kryger stood by the open window of the station wagon, he detected the odor of marijuana emanating from the rear of the vehicle (1 Tr. 37). The agents immediately ordered respondents out of the car and arrested them (1 Tr. 38-39). They then removed one of the suitcases from the floor of the back seat of the station wagon and opened it (1 Tr. 40-41). Inside were several wrapped bricks of marijuana (*ibid.*).

A majority of the panel of the court of appeals affirmed respondents' convictions, finding that the initial stop of respondents' vehicle was justified under *Terry* v. *Ohio*, 392 U.S. 1 (1968), that the odor of marijuana coming from the station wagon supplied probable cause to arrest respondents and to search their vehicle and its contents, and that the warrantless search of the suitcase was valid under the automobile search exception to the warrant requirement, which the panel viewed as unaffected by *United States* v. *Chadwick*, 433 U.S. 1 (1977) (App. B, *infra*, 21a-29a). On rehearing en banc the court of appeals reversed, one judge dissenting. Although it agreed with the panel that the agents had lawfully stopped the station wagon and had arrested respondents and seized their suitcase on probable cause, the court concluded that the search of the suitcase without a warrant violated the Fourth Amendment, as construed in *Chadwick* (App. A, *infra*, 5a-12a).

REASONS FOR GRANTING THE PETITION

The decision of the court of appeals raises an important question of Fourth Amendment law identical to that now before the Court in *Arkansas* v. *Sanders*, cert. granted, No. 77-1497 (Oct. 10, 1978). In *Sanders*, on similar facts,[2] the Supreme Court of Arkansas construed *United States* v. *Chadwick*, *supra*, to prohibit police officers from conducting a warrantless, on-the-spot search of a suitcase found inside an automobile stopped on a public street, even though the officers had probable cause to believe that the suitcase contained contraband. The Court's decision in *Sanders* should control this case.

Prior to *Chadwick*, the federal courts of appeals had relied upon the automobile exception to the warrant requirement (see *Carroll* v. *United States*, 267 U.S. 132 (1925); *Chambers* v. *Maroney*, 399 U.S. 42 (1970)) to uphold the warrantless, probable cause search of luggage or other closed containers found inside an automobile. See, *e.g.*, *United States* v. *Chuke*, 554 F.2d 260, 262-264 (6th Cir. 1977); *United*

[2] The facts in *Sanders* showed that on April 23, 1976, a reliable informant notified police officers in Little Rock, Arkansas, that the defendant would be arriving at the Municipal Airport that afternoon with a green suitcase containing marijuana. Police officers went to the airport and observed defendant leave the terminal with a green suitcase and place it in the trunk of a taxicab. As the cab drove away from the airport, the officers stopped it and ordered the defendant to get out of the vehicle and the cab driver to unlock the trunk. They then opened the suitcase and found 9.3 pounds of marijuana (77-1497 Pet. App. 2a).

States v. *Canada*, 527 F.2d 1374, 1380 (9th Cir. 1975), cert. denied, 429 U.S. 867 (1976); *United States* v. *Tramunti*, 513 F.2d 1087, 1104-1105 (2d Cir.), cert. denied, 423 U.S. 832 (1975); *United States* v. *Issod*, 508 F.2d 990, 993 (7th Cir. 1974), cert. denied, 421 U.S. 916 (1975); *United States* v. *Soriano*, 497 F.2d 147, 149-150 (5th Cir. 1974) (en banc), cert. denied, 433 U.S. 911 (1977). Although *Chadwick* did not involve the search of an automobile, and, indeed, although the Court's opinion had expressly reaffirmed the validity of the automobile exception (433 U.S. at 12),[3] the circuits have disagreed about the impact of *Chadwick* on these prior rulings. The Fifth Circuit, like the Eighth Circuit in this case, has stated that *Chadwick* requires law enforcement officers to obtain a warrant before opening a suitcase seized from a motor vehicle. *United States* v. *Fontecha*, 576 F.2d 601, 605 (5th Cir. 1978). See also *United States* v. *Montgomery*, 558 F.2d 311, 312 (5th Cir.), cert. denied, 434 U.S. 927 (1977). On the

[3] This Court has never had occasion to apply the automobile exception to the probable cause search of a chattel taken from a motor vehicle. However, it has frequently upheld the warrantless search of enclosed areas of an automobile, such as a glove compartment or trunk, that are in many ways indistinguishable from a suitcase or briefcase found inside an automobile. See, *e.g.*, *Texas* v. *White*, 423 U.S. 67, 68 (1975) (front seat console); *Cady* v. *Dombrowski*, 413 U.S. 433, 437 (1973) (locked trunk); *Scher* v. *United States*, 305 U.S. 251, 253 (1938) (locked trunk); *Chambers* v. *Maroney*, *supra*, 399 U.S. at 44 (glove compartment). See also *United States* v. *Chadwick*, *supra*, 433 U.S. at 23 n.4 (Blackmun, J., dissenting).

other hand, in *United States* v. *Finnegan*, 568 F.2d 637, 640-641 (9th Cir. 1977), the Ninth Circuit ruled that the automobile exception justified the warrantless, probable cause search of a suitcase left inside an automobile following the arrest of the driver. See also *United States* v. *McGrath*, 448 F. Supp. 1338, 1341-1342 (S.D. N.Y. 1978); cf. *United States* v. *Gaultney*, 581 F.2d 1137, 1144-1145 (5th Cir. 1978).

The Court should hold this petition pending its decision in *Sanders*. If the Court concludes in *Sanders* that a warrant is not required to conduct an immediate search, on probable cause, of a suitcase or other chattel taken from an automobile under circumstances that would allow the motor vehicle itself to be searched without a warrant, it should grant certiorari in this case and either reverse the judgment of the court of appeals or, if appropriate, remand for reconsideration in light of the decision in *Sanders*.[4]

[4] The search in this case, like the one in *Sanders*, took place prior to June 21, 1977, the date of the Court's decision in *Chadwick*. The Eighth Circuit's holding that *Chadwick* should be given retroactive effect (see also *United States* v. *Schleis*, 582 F.2d 1166 (8th Cir. 1978)) is in conflict with the decisions of four other circuits (*United States* v. *Choate*, 576 F.2d 165, 182 n.20 (9th Cir. 1978), cert. denied, No. 78-42 (Nov. 6, 1978); *United States* v. *Berry*, 571 F.2d 2 (7th Cir. 1978), cert. denied, No. 77-6605 (Oct. 2, 1978); *United States* v. *Reda*, 563 F.2d 510 (2d Cir. 1977), cert. denied, 435 U.S. 973 (1978); *United States* v. *Montgomery*, 558 F.2d 311 (5th Cir.), cert. denied, 434 U.S. 927 (1977); see also *United States* v. *Powell*, 449 F. Supp. 562, 564 (E.D. Pa. 1978)) and is contrary to this Court's consistent approach to the issue. As the Court observed in *United States* v. *Peltier*, 422 U.S. 531, 535 (1975):

> [I]n every case in which the Court has addressed the retroactivity problem in the context of the exclusionary rule, whereby concededly relevant evidence is excluded in order to enforce a constitutional guarantee that does not relate to the integrity of the factfinding process, the Court has concluded that any such new constitutional principle would be accorded only prospective application.

See also *Williams* v. *United States*, 401 U.S. 646 (1971); *Desist* v. *United States*, 394 U.S. 244 (1969); *Linkletter* v. *Walker*, 381 U.S. 618 (1965). Indeed, retroactive application of *Chadwick* is particularly inappropriate in the Eighth Circuit in view of the established pre-*Chadwick* law in that circuit upholding the warrantless search of chattels on probable cause. See *United States* v. *Schleis*, 543 F.2d 59 (1976), vacated and remanded, 433 U.S. 905 (1977); *United States* v. *Wilson*, 524 F.2d 595, cert. denied, 424 U.S. 945 (1975); *United States* v. *Buckhanon*, 505 F.2d 1079 (1974). See generally *United States* v. *Peltier*, *supra*, 422 U.S. at 542; *Chevron Oil Co.* v. *Huson*, 404 U.S. 97, 107 (1971).

If, however, the Court affirms the judgment of the Arkansas Supreme Court in *Sanders*, this petition should be denied.

CONCLUSION

The Court should defer consideration of this petition pending the decision in *Arkansas* v. *Sanders* and should then dispose of the petition in light of that decision.

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DECEMBER 1978

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 77-1335

UNITED STATES OF AMERICA, APPELLEE

v.

ROBERT CHARLES STEVIE, APPELLANT

No. 77-1424

UNITED STATES OF AMERICA, APPELLEE

v.

RAYMOND LEE REYNOLDS, APPELLANT

Submitted: April 13, 1978

Filed: August 15, 1978

ON PETITION FOR REHEARING EN BANC

Before GIBSON, Chief Judge, and LAY, HEANEY, BRIGHT, ROSS, STEPHENSON and HENLEY, Circuit Judges, en banc.

HEANEY, Circuit Judge.

This case is before the Court pursuant to a petition for a rehearing en banc. In an opinion issued on November 17, 1977, a panel of this Court held that the initial stop of the appellants' rented station wagon was justified, that probable cause existed to search one of the suitcases located in the rear of the station wagon and that the warrantless search of the suitcase at the scene of the arrest was valid under *United States* v. *Chadwick*, 433 U.S. 1 (1977). *United States* v. *Robert Charles Stevie and United States* v. *Raymond Lee Reynolds*, Nos. 77-1335 and 77-1424 (8th Cir., filed November 17, 1977). We leave the panel opinion untouched except insofar as it upholds the warrantless search of the appellants' suitcase.

I.

The background needed for the consideration of this case is furnished by the panel opinion's detailed recitation of the facts, which we quote below.

> On February 9, 1976, in response to a tip from an informant who had provided reliable information in the past, Officer John Boulger and Agent Markus Kryger of the Drug Enforcement Administration Task Force were at the Minneapolis-St. Paul International Airport to conduct a surveillance of incoming passengers. Their intention was to observe one James Erickson, who, according to their information, had traveled to Phoenix, Arizona, to purchase a large quantity of marijuana and was to arrive by air from either Phoenix or Las Vegas, Nevada. As a result of prior occurrences, the agents knew of

James Erickson and that he had connections with Theodore Luciow. They further were aware that Theodore Luciow's twin brother, Anthony, had been arrested in possession of approximately 300 pounds of marijuana contained in an Avis rental-car rented in Arizona by Raymond Reynolds. At that time reliable informants told them that Anthony Luciow had gone to Arizona to purchase this marijuana from Reynolds.

Among passengers embarking from a Las Vegas incoming flight shortly before midnight, two young, white males caught the agents' attention because they were acting "[i]n a suspicious manner" and were "apprehensive of things around them." The two men, appellants Stevie and Reynolds, did not communicate with each other but maintained a distance of approximately fifty feet between themselves. In addition, it was noted that Stevie was walking faster than the other passengers.

When they reached the lower level of the airport, Stevie proceeded to the baggage claim area and Reynolds approached the Avis car rental counter, neither speaking to the other. Stevie removed two large suitcases from the baggage carousel. Agent Kryger observed that these appeared to be heavy. At that point, without pretense of secrecy, Agent Kryger walked up next to Stevie and observed the name "M. Roberts" and a Phoenix address on the bags' nametags. After looking warily at Agent Kryger, Stevie engaged a uniformed skycap to handle the luggage and returned for three more large, new suitcases. He gave directions to the skycap and then

walked over to the Avis counter and spoke to Reynolds for the first time since the agents had commenced observing them. Their gestures indicated that the conversation pertained to the two agents, who continued to observe them until Officer Boulger went out to his car in the airport parking lot. Stevie then left the building and joined the luggage handler who had taken the bags directly to the Avis parking lot and loaded them into a rented Oldsmobile station wagon.

After Reynolds left the Avis counter area, Agent Kryger spoke to the person at the counter and learned from her that the automobile had been rented to an R. Reynolds of Phoenix, Arizona, who signed his name "Raymond L. Reynolds."

When Reynolds and Stevie left the airport parking lot they were followed by Agent Kryger and Officer Boulger in separate vehicles. The two agents were in radio contact with each other and with the DEA office. They exchanged information as to Reynolds' name and his connection with the Luciow brothers. In addition they learned from their office that the middle initial of the Ray Reynolds involved in the case of Anthony Luciow was "L." As they followed the rented automobile on a four-lane express highway, they observed that the passenger in the car was continually facing the rear and the driver was frequently looking into his rearview mirror. Although Agent Kryger testified their initial intention was to follow the appellants to their destination, the agents determined this would be impracticable and so stopped them on the highway.

Agent Kryger approached the driver's side and asked the driver for his identification. The driver produced a driver's license which revealed that he was Raymond L. Reynolds of Phoenix, Arizona. Officer Boulger established that the passenger's identity was Robert Stevie. Thus, neither of the identities matched the name "M. Roberts" on the suitcase nametags. As Agent Kryger was standing at the window of the car examining the driver's license he smelled the distinctive odor of marijuana.

At this point the agents instructed Reynolds and Stevie to get out of the car and placed them under arrest. The agents opened one of the suitcases that had been placed on the floor of the rear area of the rental station wagon. Inside they found wrapped bricks of a vegetable substance later determined to be marijuana.

Id. at slip op. 2-5 (footnotes omitted).

II.

The panel opinion upheld the search of the suitcase under the automobile exception to the Fourth Amendment warrant clause. *Id.* at slip op. 9-12. In reaching its decision, it considered the application of the Supreme Court's decision in *Chadwick* which held that, absent exigent circumstances, a warrant must be obtained prior to a search of an arrestee's luggage once it comes under the exclusive control of the arresting officer. *See United States* v. *Chadwick*, *supra* at 15-16; *United States* v. *Ronald Schleis*, No. 76-1256 slip op. at 6 (8th Cir., to be filed concurrently). The

panel opinion distinguished *Chadwick* on the ground that, in *Chadwick*, the footlocker was *outside* an automobile at the time it was seized and, in this case, the suitcase was *inside* an automobile at the time of the search and seizure. It concluded that the right to conduct a warrantless automobile search was not circumscribed by *Chadwick* since the Court in *Chadwick* clearly recognized and reaffirmed the unique treatment given to automobiles in a Fourth Amendment context. *Id.* at slip op. 9-10.

While we agree with the panel opinion's analysis that *Chadwick* does not circumscribe the automobile exception, we cannot agree that the automobile exception, and not *Chadwick*, applies to the facts of this case. We hold that an individual's expectation of privacy in the contents of luggage—which was established by the Court in *Chadwick* [1]—is entitled to the protection of the Fourth Amendment whether the luggage is located *inside* or *outside* an automobile.[2]

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[1] The search of the appellants' suitcase took place on February 9, 1976, over a year before the Supreme Court issued its decision in *United States* v. *Chadwick*, 433 U.S. 1 (1977). We have today held that the decision in *Chadwick* presents no question of retroactivity and, thus, we need not reach that issue here. *United States* v. *Ronald Schleis*, No. 77-1256, slip op. 14-18 (8th Cir., to be filed concurrently).

[2] We stress that in so holding, we do not limit the automobile exception to the Fourth Amendment warrant clause. Searches of motor vehicles—such as the search of a U-Haul truck for stolen loading equipment in *United States* v. *Young*, 567 F.2d 799 (8th Cir. 1977)—will continue to be upheld under the automobile exception.

III.

The fact that the search of the suitcase occurred in an automobile at the time of the appellants' arrest does not automatically validate the search.

A.

The government first seeks to justify the search of the suitcase under the automobile exception to the Fourth Amendment warrant clause. The Supreme Court "has recognized significant differences between motor vehicles and other property which permit warrantless searches of automobiles in circumstances in which warrantless searches would not be reasonable in other contexts," because of both the inherent mobility, and the diminished expectation of privacy, in a motor vehicle. *United States* v. *Chadwick*, *supra* at 12. It is clear in this case that the law enforcement officers could legitimately immobilize the station wagon and seize the suitcases located in the rear pursuant to the automobile exception. It does not necessarily follow, however, that the contents of the suitcase located in the station wagon are subject to search under the automobile exception, anymore than they would be if the officers had seized them any other place. *United States* v. *Chadwick*, *supra* at 17 n.1 (Brennan, J., concurring). As the Supreme Court has noted, "[t]he word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears." *Coolidge* v. *New Hampshire*, 403 U.S. 443, 461 (1971).

In *Chadwick*, the Supreme Court rejected the government's contention that luggage should be analogous to automobiles for Fourth Amendment purposes. *United States* v. *Chadwick*, *supra* at 12-13; *United States* v. *Ronald Schleis*, *supra*, slip op. at 6. In reaching its decision, the Court contrasted the privacy interests in luggage with those in an automobile.

> The factors which diminish the privacy aspects of an automobile do not apply to respondents' footlocker. Luggage contents are not open to public view * * * nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a respository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile.

Id. at 13.

The Court concluded that an individual has a legitimate expectation that the contents[8] of luggage will

[8] We note that the individual's expectation of privacy is in the contents of the luggage and not in the luggage itself. As the Court stated in *Chadwick*,

> [r]espondents' principal privacy interest in the footlocker was, of course, not in the container itself, which was exposed to public view, but in its contents. A search of the interior was therefore a far greater intrusion into Fourth Amendment values than the impoundment of the footlocker. Though surely a substantial infringement with respondents' use and possession, the seizure did not diminish respondents' legitimate expectation that the footlocker's contents would remain private.

United States v. *Chadwick*, *supra* at 13-14 n.8.

remain free from public examination and, thus, absent an exigency, it is unreasonable to conduct a warrantless search of an arrestee's luggage. *Id.* at 11.

The Ninth Circuit, in sustaining the search of a suitcase taken from a car, has held that *Chadwick* does not apply to luggage taken directly from an automobile.[4] *United States* v. *Finnegan*, 568 F.2d 637, 641 (9th Cir. 1977). We cannot read *Chadwick* in this manner. The Court in *Chadwick* clearly held that an individual has a legitimate expectation of privacy in the contents of luggage. Every factor which the Court cites in support of its holding remains present whether the luggage is *inside* or *outside* an automobile. Moreover, no Supreme Court decision directly supports the Ninth Circuit's position, and every Court of Appeals decision supporting the position was decided prior to the Supreme Court's decision in *Chadwick*.

We conclude, therefore, that the appellants' expectation of privacy in the contents of the suitcase

[4] The Ninth Circuit also reached a similar conclusion in *United States* v. *Raymond Wesley Ficklin, Jr., and Richard Paul Seefeldt*, Nos. 77-2923 and 77-3220 (9th Cir., filed February 10, 1978), *petition for cert. filed*, 46 U.S.L.W. 3741 (U.S. May 17, 1978) (No. 77-1635), where it sustained a search of plastic and burlap bags located in a car trunk. The *Ficklin* case might be distinguished, however, on the ground that there is not as great an expectation of privacy "in plastic and burlap bags (which the officer immediately recognized as the type customarily used to haul marijuana)". *Id.* at slip op. 3. We need not reach that question here.

was not dissipated because they placed it in the rear of a station wagon.[5]

B.

The government next seeks to justify the search on the ground that *Chadwick* does not apply to a search that is not remote in time and place to the arrest. We do not find this argument to be persuasive. As this Court today states in *United States* v. *Ronald Schleis, supra*:

> *Chadwick* establishes that the critical factor is the extent to which the property is within the control of the law enforcement officers, rather than the amount of time or space between the arrest and the search. *United States* v. *Ester*, 442 F.Supp. 736, 739 (S.D. N.Y. 1978). Once the officers obtain exclusive control, the requirement for a warrant under *Chadwick* is triggered. Ordinarily, the initial seizure at the time of arrest would be sufficient to place the property within the officer's exclusive control. To otherwise interpret *Chadwick* "would enable police and federal agents to circumvent the *Chadwick* holding by encouraging them to conduct a search of luggage at the time and location of the seizure in conjunction with a lawful arrest." Note, *Criminal Procedure—Search and Seizure—Persons Lawfully Arrested for Alleged Possession of Narcotics have a Privacy Interest in a Footlocker in Their Possession at the Time of Their Arrest which is Protected by the Warrant Clause of the Fourth Amendment. United States* v. *Chadwick*, 6 AM.J.CRIM.LAW 81, 94 (1978) [.]

Id., slip op. at 11-12.

In this case, the appellants were under arrest and were outside of the station wagon when the officers searched the suitcase inside the rear of the station wagon.[6] Moreover, the government has demonstrated no exigent circumstances which required that the suitcase be searched at the scene of the arrest. The suitcase had clearly come under the exclusive control of the officers and, thus, the requirement for a warrant under *Chadwick* was triggered.

IV.

In sum, the warrantless search of the appellants' suitcase cannot be justified under the automobile ex-

[5] Other Courts have also interpreted *Chadwick* to require a warrant prior to a search of luggage seized from an automobile. In *United States* v. *Vallieres*, 443 F.Supp. 186 (D. Conn. 1977), the Court suppressed the contents of two closed suitcases seized from the trunk of an automobile in the course of an arrest. It upheld the search of an unzippered suitcase because its contents were in plain view. *See United States* v. *Pugh*, 566 F.2d 626 (8th Cir. 1977) (upholding the search of an open briefcase found in an automobile under the plain view exception). In *Sanders* v. *State*, 262 Ark. 595, 559 S.W.2d 704 (1977), *petitions for cert. filed*, 46 U.S.L.W. 3680 (U.S. April 19, 1978) (No. 77-1497), the Court invalidated the search of a suitcase taken from a taxi during the course of an arrest.

[6] The suitcases were no longer within the appellants' immediate area of control and, thus, were not subject to search under *Chimel* v. *California*, 395 U.S. 752 (1969), and its rationale of protecting officers from possible physical harm and preventing possible destruction or concealment of evidence.

ception or as a search incident to arrest. Thus, the search was violative of the appellants' Fourth Amendment rights.

Reversed.

GIBSON, Chief Judge, Dissenting.

After carefully considering Judge Heaney's opinion and reconsidering the panel opinion in this case, published at 578 F.2d 204, I would affirm the convictions. As determined by the panel opinion, the search of the suitcase should be upheld as within the automobile exception to the warrant requirement. *United States* v. *Finnegan*, 568 F.2d 637, 641-42 (9th Cir. 1977).

I have little to add to the panel opinion but will correct the apparent misapprehension of the majority as to the distinction the panel drew between *Chadwick* and the present case. The majority view *Chadwick* as involving seizure of a footlocker *outside* an automobile while the present case involves a search and seizure *inside* an automobile. Actually, in both cases the luggage was inside an automobile when seized. However, in *Chadwick*, the Government conceded that no automobile search was involved because the seizure occurred immediately after the footlocker was placed in the automobile's trunk and before the trunk had been closed or the engine started. This fleeting contact was not sufficient to bring the automobile search exception into play.

By contrast, the seizure in this case occurred on a four-lane express highway. The suitcases had been transported a considerable distance in the automobile by the defendants. The search was conducted immediately after the automobile was stopped. Thus the present case is distinguishable from *Chadwick* by the significant contact the suitcases had with the automobile. *United States* v. *Chadwick*, 433 U.S. at 22-24 (Blackmun, J., dissenting). The reasons justifying warrantless automobile searches apply, in my opinion, to searches of containers found inside the automobile. *See* cases cited in *United States* v. *Chadwick*, 433 U.S. at 23 n.4 (Blackmun, J., dissenting).

There is one other element of the majority's decision that disturbs me. The majority opinion in this case and in *United States* v. *Schleis*, No. 76-1256 (8th Cir. to be filed concurrently), seem carefully crafted to suggest that warrants will now be required for a search of most personal property that has been reduced to the exclusive control of law enforcement officers. The dictum in the panel opinion in *United States* v. *Haley*, No. 78-1005 (8th Cir. to be filed concurrently) carries this suggestion one step further. It correctly upholds the warrantless opening of a zippered leather container found in plain view in a car, but only because of the exigent circumstances of an apparently injured man needing assistance. To assume that the expectation of privacy in a zippered bag approaches the expectation of privacy in a

locked footlocker is carrying the analogy beyond its reasonable limits. The entire opinion in *Chadwick* is premised on the obvious expectation of privacy enjoyed by a person who double-locks a footlocker.

As properly noted in *Chadwick*, the warrant clause of the Fourth Amendment "protects people from unreasonable government intrusions into their legitimate expectations of privacy" but how much "legitimate" expectation of privacy should a person be permitted to enjoy in the concealment and transportation of contraband? If *Chadwick* is viewed as applying to all closed pieces of luggage and containers that are subject to personal modes of transportation, then the enforcement of the criminal laws will be severely diminished by the inability of the law enforcement officers to discover and apprehend those who are in the pursuit of lawless activities. The additional time, energy, and cost in attempting to locate a magistrate and secure a warrant cannot help but impair and diminish the effective operation of law enforcement officers. This is not to say that the Fourth Amendment is not a prized personal constitutional right enjoyed by free people, but the Fourth Amendment proscription is "against unreasonable searches and seizures." In this situation I do not think that the defendant had, should have had, or could have had any "legitimate" expectation of privacy in the concealment of marijuana in a closed piece of luggage being transported on a public highway of this country. I view this search as reasonable.

The application of *Chadwick* to personal property other than locked luggage remains to be decided in this circuit. I do not agree with the statement in *United States* v. *Marchand*, 564 F.2d 983, 991-92 (2d Cir. 1977), *cert. denied*, 98 S. Ct. 732 (1978), suggesting that police must now obtain a warrant before opening a wallet found in plain view and extracting a driver's license therefrom. The language is particularly regrettable since it had no impact on the outcome of Marchand's appeal and is therefore dictum.

In light of my conclusion that the instant case involves an automobile search not governed by *Chadwick*, I express no views on the retroactive application of that decision. I would affirm the convictions of Stevie and Reynolds.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 77-1335

UNITED STATES OF AMERICA, APPELLEE

v.

ROBERT CHARLES STEVIE, APPELLANT

No. 77-1424

UNITED STATES OF AMERICA, APPELLEE

v.

RAYMOND LEE REYNOLDS, APPELLANT

Submitted: August 31, 1977

Filed: November 17, 1977

APPEALS FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA

Before GIBSON, Chief Judge, HEANEY and WEBSTER, Circuit Judges.

WEBSTER, Circuit Judge.

In separate trials on stipulated facts, the appellants were found guilty by the District Court[1] of possession with intent to distribute marijuana in violation of 21 U.S.C. § 841(a)(1). Approximately 250 pounds of marijuana concealed in suitcases were seized in a search of the station wagon in which appellants were riding. On appeal they contend that this evidence, which was the corpus delecti of the case, should have been suppressed because it was the fruit of an unreasonable seizure of the automobile and an illegal search of its contents in violation of the Fourth Amendment.

Following the filing of briefs in this appeal the Supreme Court rendered its decision in *United States* v. *Chadwick*, 433 U.S. 1, 97 S.Ct. 2476 (1977), holding that the search of a double-locked footlocker was subject to the Fourth Amendment's warrant requirement when it was seized on probable cause but not searched until later at the station house. The applicability of *Chadwick* was argued on appeal. Because of this, we deem it appropriate to set forth the facts of this case in some detail.

On February 9, 1976, in response to a tip from an informant who had provided reliable information in the past, Officer John Boulger and Agent Markus Kryger of the Drug Enforcement Administration Task Force were at the Minneapolis-St. Paul International Airport to conduct a surveillance of incom-

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[1] The Honorable Donald D. Alsop, United States District Court for the District of Minnesota.

ing passengers. Their intention was to observe one James Erickson, who, according to their information, had traveled to Phoenix, Arizona, to purchase a large quantity of marijuana and was to arrive by air from either Phoenix or Las Vegas, Nevada. As a result of prior occurrences, the agents knew of James Erickson and that he had connections with Theodore Luciow. They further were aware that Theodore Luciow's twin brother, Anthony, had been arrested in possession of approximately 300 pounds of marijuana contained in an Avis rental car rented in Arizona by Raymond Reynolds. At that time reliable informants told them that Anthony Luciow had gone to Arizona to purchase this marijuana from Reynolds.

Among passengers embarking from a Las Vegas incoming flight shortly before midnight, two young, white males caught the agents' attention because they were acting "[i]n a suspicious manner" and were "apprehensive of things around them." The two men, appellants Stevie and Reynolds, did not communicate with each other but maintained a distance of approximately fifty feet between themselves. In addition, it was noted that Stevie was walking faster than the other passengers.

When they reached the lower level of the airport, Stevie proceeded to the baggage claim area and Reynolds approached the Avis car rental counter, neither speaking to the other. Stevie removed two large suitcases from the baggage carousel. Agent Kryger observed that these appeared to be heavy. At that point,

without pretense of secrecy, Agent Kryger walked up next to Stevie and observed the name "M. Roberts" and a Phoenix address on the bags' nametags. After looking warily at Agent Kryger, Stevie engaged a uniformed skycap to handle the luggage and returned for three more large, new suitcases. He gave directions to the skycap and then walked over to the Avis counter and spoke to Reynolds for the first time since the agents had commenced observing them. Their gestures indicated that the conversation pertained to the two agents, who continued to observe them until Officer Boulger went out to his car in the airport parking lot. Stevie then left the building and joined the luggage handler who had taken the bags directly to the Avis parking lot and loaded them into a rented Oldsmobile station wagon.

After Reynolds left the Avis counter area, Agent Kryger spoke to the person at the counter and learned from her that the automobile had been rented to an R. Reynolds of Phoenix, Arizona, who signed his name "Raymond L. Reynolds."

When Reynolds and Stevie left the airport parking lot they were followed by Agent Kryger and Officer Boulger in separate vehicles. The two agents were in radio contact with each other and with the DEA office. They exchanged information as to Reynolds' name and his connection with the Luciow brothers. In addition they learned from their office that the middle initial of the Ray Reynolds involved in the case of Anthony Luciow was "L." As they followed the rented automobile on a four-lane express high-

way, they observed that the passenger in the car was continually facing the rear and the driver was frequently looking into his rearview mirror. Although Agent Kryger testified their initial intention was to follow the appellants to their destintion, the agents determined this would be impracticable and so stopped them on the highway.

Agent Kryger approached the driver's side and asked the driver for his identification. The driver produced a driver's license which revealed that he was Raymond L. Reynolds of Phoenix, Arizona. Officer Boulger established that the passenger's identity was Robert Stevie. Thus, neither of the identities matched the name "M. Roberts" on the suitcase nametags. As Agent Kryger was standing at the window of the car examining the driver's license he smelled the distinctive odor of marijuana.[2]

At this point the agents instructed Reynolds and Stevie to get out of the car and placed them under arrest. The agents opened one of the suitcases that had been placed on the floor of the rear area of the

[2] Agent Kryger testified that he smelled the odor of marijuana when Reynolds rolled down the car window to produce his driver's license. Officer Boulger testified that he also smelled the odor when he opened the front door on the passenger's side to allow Stevie to get out of the cold winter air after the two appellants had been requested to step out of the car. Although the parties produced experts whose testimony conflicted as to whether the odor of marijuana packaged as this was could be detected, the District Court found that "Kryger was able to and did detect the odor of marijuana" when Reynolds rolled down the car window.

rental station wagon.[3] Inside they found wrapped bricks of a vegetable substance later determined to be marijuana.

This appeal presents the following issues for consideration: (1) whether the initial stop of the rental car was justified, (2) whether there existed probable cause to search the suitcase, and (3) whether the warrantless search of the suitcase at the scene is valid in light of the recent Supreme Court decision of *United States* v. *Chadwick, supra.*

Appellants' initial contention is that the agents did not have "specific and articulable facts" as required by *Terry* v. *Ohio*, 392 U.S. 1, 20-22 (1968), to justify stopping the car for an investigatory stop. They argue that the facts of this case present insufficient indicia of criminal activity to justify the agents' actions in stopping appellants' vehicle.

Terry requires a dual inquiry into the reasonableness of an investigatory stop. The reviewing court must determine: "(1) whether the facts warranted the intrusion on the individual's Fourth Amendment rights, and (2) whether the scope of the intrusion was reasonably related 'to the circumstances which justified the interference in the first place.' " *Carpenter* v. *Sigler*, 419 F.2d 169, 171 (8th Cir. 1969). The District Court applied this standard and held the facts warranted the agents' suspicions that criminal activity might be afoot. We agree.

[3] According to Agent Kryger the search occurred within five minutes after they stopped the car.

The agents were at the airport as a result of the tip of an informer, whose information had proven reliable in the past, that a sizable shipment of marijuana was about to arrive there. Although they did not see the party they were expecting, they independently observed and noted the suspicious conduct of the two appellants. The fact that Stevie and Reynolds consciously avoided communication became significant when it later became apparent that they knew each other and in fact left the airport in the same automobile. Additionally, Agent Kryger noted that the suitcases were large and very heavy, and Stevie and Reynolds acted suspiciously when Kryger conspicuously appeared to be curious. Most significantly, the name on the automobile rental form was one the agents were aware of from prior drug activity and belonged to a person who may have been associated with the party they were expecting to observe. Finally, there was appellants' furtive conduct in their automobile. Altogether, there were more than sufficient objective facts known to the police officers to justify an investigatory stop for further inquiry. *See Adams* v. *Williams*, 407 U.S. 143 (1972); *United States* v. *Bailey*, 547 F.2d 68 (8th Cir. 1976); *United States* v. *Geelan*, 509 F.2d 737 (8th Cir. 1974), *cert. denied*, 421 U.S. 999 (1975); *Orricer* v. *Erickson*, 471 F.2d 1204 (8th Cir. 1973); *Carpenter* v. *Sigler*, *supra*.

II.

The second half of the *Terry* test—whether the scope of the intrusion was reasonably related to the circumstances justifying the interference in the first instance—must be answered in the affirmative. The stop was proper, as was the demand that appellants provide identification. As a result of this reasonable and limited intrusion, two additional facts became known to the officers when they requested identification from Stevie and Reynolds. The first was that the name on the luggage nametag previously observed at the airport did not match that of either of the appellants. It is not uncommon for drug traffickers to travel under assumed names.[4] Of even more crucial significance, however, the officers detected the odor of marijuana emanating from the interior of the automobile.[5]

This Court has held that the presence of the odor of marijuana is sufficient to establish probable cause for purposes of a search warrant. *Miller* v. *Sigler*, 353 F.2d 424 (8th Cir. 1965). *See also United States* v. *Solis*, 536 F.2d 880 (9th Cir. 1976); *cf. Johnson* v. *United States*, 333 U.S. 10 (1948) (odors may be evidence of probable cause necessary to support a search warrant). Similarly, it has been held that the

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[4] This form of discrepancy along with informant's report has been held sufficient to support a finding of probable cause to arrest. *United States* v. *Scott*, 545 F.2d 38, 40 (8th Cir. 1976), *cert. denied*, 429 U.S. 1066 (1977).

[5] *See* note 2 and accompanying text *supra*.

odor of marijuana may be used to establish probable cause to arrest, *see United States* v. *Bronstein*, 521 F.2d 459, 463 (2d Cir. 1975), *cert. denied*, 424 U.S. 918 (1976), and to search a mobile vehicle, *see United States* v. *Strickland*, 534 F.2d 1386 (10th Cir.), *cert. denied*, 429 U.S. 831 (1976); *United States* v. *Johnston*, 497 F.2d 397 (2d Cir. 1974); *United States* v. *Troise*, 483 F.2d 615 (5th Cir.), *cert. denied*, 414 U.S. 1066 (1973); *United States* v. *Diamond*, 471 F.2d 771 (9th Cir.), *cert. denied*, 412 U.S. 932 (1973). Similarly, the odor of marijuana, together with other strong circumstantial evidence, provided both probable cause to arrest and to search the automobile in which Stevie and Reynolds were riding.

III.

At oral argument, appellants contended that the suitcases within the station wagon were protected from a warrantless search by *Chadwick* v. *United States, supra.* The parimeters of *Chadwick* will no doubt be fully developed in subsequent cases. It is sufficient in this case to say that we detect no intent to circumscribe more narrowly the existing automobile exception to the warrant requirement, and in fact the Supreme Court in *Chadwick* clearly recognized and distinguished the prior cases establishing the exception.

In *Chadwick* federal narcotics agents arrested three persons outside a Boston train station after they had placed a large footlocker in the trunk of

their car. At the time of the arrest, the car's trunk was still open and the engine had not been started. The three were taken to the federal building along with the, as yet unopened, footlocker. An hour and a half after the arrests the agents opened the double-locked footlocker even though "[f]acilities were readily available in which the footlocker could have been stored securely" and it was "not contended that there was any exigency calling for an immediate search." 97 S.Ct. at 2480. Inside the footlocker they found large amounts of marijuana.

The Supreme Court opinion in *Chadwick* made it clear that "the footlocker's brief contact with Chadwick's car" did not give rise to its consideration as an automobile search exception to the warrant requirement. 97 S.Ct. at 2483-84. It then reaffirmed the unique treatment given to automobiles in a Fourth Amendment context:

> Our treatment of automobiles has been based in part on their inherent mobility, which often makes obtaining a judicial warrant impracticable. Nevertheless, we have also sustained "warrantless searches of vehicles . . . in cases in which the possibilities of the vehicle's being removed or evidence in it destroyed were remote, if not non-existent." *Cady* v. *Dombrowski*, 413 U.S. 433, 441-442 . . . (1973); *accord, South Dakota* v. *Opperman*, . . . 428 U.S. at 367 . . .; see *Texas* v. *White*, 423 U.S. 67 . . . (1975); *Chambers* v. *Maroney; Cooper* v. *California*, 386 U.S. 58 . . . (1967).

The answer lies in the diminished expectation of privacy which surrounds the automobile:

> "One has a lesser expectation of privacy in a motor vehicle because its function is transportation and it seldom serves as one's residence or as the repository of personal effects. . . . It travels public thoroughfares where both its occupants and its contents are in plain view." *Cardwell* v. *Lewis*, 417 U.S. 583, 590 . . . (1974) (plurality opinion).

Other factors reduce automobile privacy. "All States require vehicles to be registered and operators to be licensed. States and localities have enacted extensive and detailed codes regulating the condition and manner in which motor vehicles may be operated on public streets and highways." *Cady* v. *Dombrowski*, 413 U.S., at 441. . . . Automobiles periodically undergo official inspection, and they are often taken into police custody in the interests of public safety. *South Dakota* v. *Opperman*, 428 U.S., at 368. . . .

97 S.Ct. at 2484. We therefore conclude that the right to conduct a warrantless automobile search has not been diminished by *Chadwick* and that traditional tests may be applied to determine the reasonableness of the scope of a challenged search.

Cady v. *Dombrowski*, 413 U.S. 433 (1973), upheld a search of the locked trunk of an automobile that had been disabled in an accident and towed away at the direction of the police. In *Cooper* v. *California*, 386 U.S. 58 (1967), the accused was arrested on a heroin charge. One week after the arrest, the police

searched the car without a warrant and found evidence in the glove compartment. The Court held that the search was not unreasonable because the reason for the search was closely related to the reason the car had been stopped and seized. *Chambers* v. *Maroney*, 399 U.S. 42 (1970), upheld a "thorough" warrantless probable cause search of an automobile that produced two revolvers from a compartment under the dashboard. The search upheld in *Texas* v. *White*, 423 U.S. 67 (1975) (per curiam) extended to the area between the seats of the car. *See also Scher* v. *United States*, 305 U.S. 251 (1938) (warrantless search of automobile trunk for bootleg whiskey); *Carroll* v. *United States*, 267 U.S. 132 (1925) (68 bottles of whiskey found behind upholstery of automobile seats); *United States* v. *Collins*, 532 F.2d 79 (8th Cir.), *cert. denied*, 429 U.S. 836 (1976) (bank robbery evidence found in trunk).

Relying upon these decisions, appellate courts have held that the exception to the warrant requirements extends to briefcases, suitcases, and other containers found inside automobiles. *See, e.g., United States* v. *Giles*, 536 F.2d 136 (6th Cir. 1976); *United States* v. *Canada*, 527 F.2d 1374 (9th Cir. 1975), *cert. denied*, 429 U.S. 867 (1976); *United States* v. *Tramunti*, 513 F.2d 1087, 1100-04 (2d Cir.), *cert. denied*, 423 U.S. 832 (1975); *United States* v. *Anderson*, 500 F.2d 1311, 1315 (5th Cir. 1974) ("a contemporaneous search of containers in the vehicle which could reasonably be employed in the illicit carriage of

contraband is also constitutionally permissible."); *United States* v. *Soriano*, 497 F.2d 147 (5th Cir. 1974) (en banc), *reaffirmed sub nom. without published opinion, United States* v. *Aviles*, 535 F.2d 658 (1976), *cert. pending* Nos. 76-5132, 76-5143; *United States* v. *Evans*, 481 F.2d 990 (9th Cir. 1973). *Cf. United States* v. *Matlock*, 558 F.2d 1328 (8th Cir. 1977) (briefcase seized while passenger was attempting to remove something from it).

The search in *United States* v. *Tramunti*, *supra*, was very similar to the one that took place in this case. Following the arrest of two persons who were riding in an automobile, police officers opened a suitcase they had seen placed in the back seat of the car and which had appeared to be very heavy. Although the arrestees were handcuffed and were no longer in a position affording access to the suitcase, the Second Circuit upheld the on-the-scene search of the suitcase as one based upon probable cause. 513 F.2d at 1104. Once probable cause was established the same factors that support the automobile exception to the warrant requirement supported the warrantless search of the suitcase located inside the automobile. The Court found that the search was reasonable for Fourth Amendment purposes because it was "immediate, on-the-spot, and of a container reasonably thought to contain narcotics." *Id.*

Similar exigent circumstances exist in the case before this Court. The automobile was stopped on a busy highway shortly after midnight. The suitcase was in the open rear area of a station wagon. The

odor of marijuana appeared to come from the suitcase. These factors supplied sufficient justification for an immediate search of the luggage in the station wagon at the scene. The marijuana seized following the search was properly admitted as evidence.

Affirmed.

HEANEY, Circuit Judge, dissenting.

The majority properly finds that the initial investigatory stop of the rental car was justified and that there was probable cause to search the automobile. It errs, however, in holding that a warrantless search of the suitcase was justified. In my judgment, *United States* v. *Chadwick*, 433 U.S. 1, 97 S.Ct. 2476 (1977), controls. In that case, the Supreme Court states:

> [T]he Government insists that the search was reasonable because the footlocker was seized contemporaneously with respondents' arrests and was searched as soon thereafter as was practicable. The reasons justifying search in a custodial arrest are quite different. When a custodial arrest is made, there is always some danger that the person arrested may seek to use a weapon, or that evidence may be concealed or destroyed. To safeguard himself and others, and to prevent the loss of evidence, it has been held reasonable for the arresting officer to conduct a prompt, warrantless "search of the arrestee's person and the area 'within his immediate control'—construing that phrase to mean the area from within which

he might gain possession of a weapon or destructible evidence." *Chimel* v. *California*, 395 U.S., at 763. See also *Terry* v. *Ohio*, 392 U.S. 1 (1968).

Such searches may be conducted without a warrant, and they may also be made whether or not there is probable cause to believe that the person arrested may have a weapon or is about to destroy evidence. The potential dangers lurking in all custodial arrests make warrantless searches of items within the "immediate control" area reasonable without requiring the arresting officer to calculate the probability that weapons or destructible evidence may be involved. *United States* v. *Robinson*, 414 U.S. 218 (1973); *Terry* v. *Ohio*, *supra*. However, warrantless searches of luggage or other property seized at the time of an arrest cannot be justified as incident to that arrest either if the "search is remote in time or place from the arrest," *Preston* v. *United States*, 376 U.S., at 367, or no exigency exists. Once law enforcement officers have reduced luggage or other personal property not immediately associated with the person of the arrestee to their exclusive control, and there is no longer any danger that the arrestee might gain access to the property to seize a weapon or destroy evidence, a search of that property is no longer an incident of the arrest.[9]

Footnote nine reads as follows:

> Of course, there may be other justifications for a warrantless search of luggage taken from a suspect at the time of his arrest; for example, if officers have reason to believe that luggage contains some immediately dangerous instrumentality, such as explosives, it would be foolhardy to transport it to the station house without opening the luggage and disarming the weapon. See, *e.g.*, *United States* v. *Johnson*, 467 F.2d 630, 639 (CA 2 1972).

Id. at 2485.

Here, no exigency existed. The officers had no reason to believe that the suitcases contained dangerous instrumentalities or that the evidence would be concealed or destroyed. The officers had control of the suitcases. They could have conveniently taken them to their headquarters and obtained a search warrant.

I recognize that two justices of the Supreme Court would approve the search made here. My reading of the majority opinion, however, does not convince me that their views represent those of the majority.

I, therefore, dissent.

A true copy.

Attest:

Clerk, U.S. Court of Appeals, Eighth Circuit.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SEPTEMBER TERM, 1978

76-1256

UNITED STATES OF AMERICA, APPELLEE

vs.

RONALD M. SCHLEIS, APPELLANT

77-1335

UNITED STATES OF AMERICA, APPELLEE

vs.

ROBERT CHARLES STEVIE, APPELLANT

77-1424

UNITED STATES OF AMERICA, APPELLEE

vs.

RAYMOND LEE REYNOLDS, APPELLANT

APPEALS FROM THE UNITED STATES
DISTRICT COURT FOR THE
DISTRICT OF MINNESOTA

The Court having considered petitions for rehearing en banc filed by counsel for appellee and, being fully advised in the premises, it is ordered that the petitions for rehearing en banc be, and it is hereby, denied.

Considering the petition for rehearing en banc as a petition for rehearing, it is ordered that the petition for rehearing also be, and it is hereby, denied.

October 18, 1978

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SEPTEMBER TERM, 1977

No. 77-1335

[Filed Aug. 15, 1978, Robert C. Tucker, Clerk]

UNITED STATES OF AMERICA, APPELLEE

vs.

ROBERT CHARLES STEVIE, APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JUDGMENT

THIS CAUSE came on to be heard on the original designated record of the United States District Court for the District of Minnesota and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment and sentence of the said District Court, in this cause, be, and the same is hereby, reversed in accordance with majority opinion of this Court.

August 15, 1978

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SEPTEMBER TERM, 1977

No. 77-1335

[Filed Aug. 15, 1978, Robert C. Tucker, Clerk]

UNITED STATES OF AMERICA, APPELLEE

vs.

RAYMOND LEE REYNOLDS, APPELLANT

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

JUDGMENT

THIS CAUSE came on to be heard on the original designated record of the United States District Court for the District of Minnesota and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court, that the judgment and sentence of the said District Court, in this cause, be, and the same is hereby, reversed in accordance with majority opinion of this Court.

August 15, 1978

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